

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DERWIN GRANT,

Plaintiff,

v.

AFNI INC.,

Defendant.

No. 07-02850 CW

ORDER CONTINUING
MOTION HEARING
AND SETTING
BRIEFING SCHEDULE

On June 6, 2007, Defendant filed a Motion for Judgment on the Pleadings. On June 11, 2007, Defendant renoticed the motion for hearing on August 2, 2007, before this Court. Pro se Plaintiff's opposition to the motion was due July 12, 2007. Plaintiff has not filed any opposition to the motion. Accordingly,

IT IS HEREBY ORDERED that the hearing on Defendant's Motion for Judgment on the Pleadings is continued to **September 6, 2007, at 2:00 p.m.** Plaintiff's opposition to the motion will be due August 16, 2007, and any reply by Defendant will be due August 23, 2007. If Plaintiff fails to file an opposition by August 16, 2007, the Court will decide the motion on the record before it.

Federal Rule of Civil Procedure 12(c) provides, "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as

1 a matter of law. Hal Roach Studios, Inc. v. Richard Feiner & Co.,
2 Inc., 896 F.2d 1542, 1550 (9th Cir. 1990). In considering a motion
3 for judgment on the pleadings, the Court must accept the
4 allegations of the non-moving party as true; the allegations of the
5 moving party which have been denied are assumed to be false. Id.

6 A motion for judgment on the pleadings is a request for an
7 order of judgment, without a trial, in favor of the party bringing
8 the motion, Defendant here. In such a motion, the party moving for
9 judgment on the pleadings argues that the pleadings do not state
10 facts that, if taken as true, entitle Plaintiff to relief. In
11 other words, Defendant will be arguing that there does not need to
12 be a trial in the case against it because the allegations in the
13 complaint do not establish a legal claim against it.

14 Plaintiff is reminded that if he does not file and serve a
15 written opposition, the Court may deem this failure to act to be
16 consent to the granting of Defendant's Motion for Judgment on the
17 Pleadings.

18 This notice shall constitute the only such notice from the
19 Court concerning the Defendant's motion. The Court will not
20 provide any further information regarding the
21 interpretation of Federal Rule of Civil Procedure 12(c) and will
22 not answer unsolicited questions about the applicable rules of
23 procedure.

24 7/26/07

25 Dated _____



26 CLAUDIA WILKEN
27 United States District Judge
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GRANT et al,

Case Number: CV07-02850 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

AFNI INC. et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 26, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Derwin Grant
245 Henry Street
San Francisco, CA 94114

Jeffrey A. Topor
Tomio Buck Narita
Simmonds & Narita LLP
44 Montgomery St., Ste 3010
San Francisco, CA 94104-4816

Dated: July 26, 2007

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk